

Rettele v. Los Angeles County, No. 04-55614
Cowen, Circuit Judge, dissenting:

JUN 21 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent. The officers had the authority to detain Plaintiffs for the duration of the search, without regard to the color of Plaintiffs' skin, the extent of the pre-warrant investigation, or the lack of emergent circumstances, because a properly granted and unquestionably legal warrant existed to search the Loneoak address and Plaintiffs were occupants of that address at the time of the search. *See Muehler v. Mena*, 544 U.S. 93, 98 (2005) ("An officer's authority to detain incident to a search is categorical; it does not depend on the quantum of proof justifying the detention or the extent of the intrusion to be imposed by the seizure") (internal quotation marks and citation omitted). Further, the officers were justified in ordering Plaintiffs out of bed at gunpoint, even though they were naked, not only because the officers had the authority to exercise unquestioned command of the situation in effectuating Plaintiffs' detention, but also because weapons could have been concealed under the bed covers. *See id.* at 99 ("[T]he risk of harm to officers and occupants is minimized if the officers routinely exercise unquestioned command of the situation.") (internal quotation marks and citation omitted).

Moreover, even assuming *arguendo* that a reasonable jury could find that a constitutional violation occurred, the law was not clearly established such that a reasonable officer would have known that the conduct was unlawful. In *Franklin*

v. Foxworth, 31 F.3d 873 (9th Cir. 1994), we found unconstitutional the officers' failure to provide clothing to a gravely ill man before exposing his genitals to twenty-three strangers for over two hours, under circumstances where there was no reason why the man was not given clothing. *Id.* at 876-78. We concluded that the detention was conducted in "a manner that wantonly and callously subjected an obviously ill and incapacitated person to entirely unnecessary and unjustifiable degradation and suffering." *Id.* at 878. Here, in contrast, Plaintiffs were not gravely ill, and their brief exposure, which lasted, at most, three or four minutes, was outweighed by the safety risks associated with allowing two occupants to remain in bed under covers during execution of a search warrant.¹

The officers' display of guns was also justified as a reasonable measure to gain control of the situation and because the officers had reason to believe that one of the suspects had a gun registered to him. Moreover, as soon as the officers had checked and cleared the bedroom, they directed Plaintiffs to put on clothing and ushered them into the living room, where the officers reached the conclusion that there was no evidence or suspects in the residence, lowered their guns, and concluded the search. Given these facts, no constitutional violation occurred. At a

¹ Because Sadler was permitted to use a bed sheet to cover herself, her exposure was limited to about one minute.

very minimum, I cannot conclude that it was clearly established that Plaintiffs' detention was "unnecessarily painful, degrading, or prolonged," or involved "an undue invasion of privacy." *Id.* at 876. There is no evidence of any wanton or callous conduct on the part of the officers. For these reasons, I submit that the complaint was properly dismissed or, alternatively, defendants are entitled to qualified immunity.